

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

SECOND APPEAL NO.153 OF 2007

Dearam Jairam Sathe & Ors.	...Appellants.
Vs.	
Smt.Vithobai Jairam Sathe & Ors.	...Respondents.

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Mr.Satyajeet Rajeshirke for the Appellants.
Mr. P.S. Dani for Respondent Nos.1 to 4.

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CORAM :DR.D.Y.CHANDRACHUD, J.
July 4, 2007.

P.C.:

The suit for partition was dismissed by the Trial Judge. The Trial Judge having held that the partition of the ancestral land has already taken place on 1st May 1980. The Additional District Judge, in appeal, has reversed the findings and has come to the conclusion on the basis of the evidence on the record that the case of partition having taken place on 1st May 1980, has not been duly established. The findings of the Appellate Court are to be found in paras 9 and 10 of the judgment. The Appellate Court has come to the conclusion that the theory that there was a partition is inherently improbable.

Even after the death of the deceased Jairam, the names of all the Plaintiffs were recorded in the 'other rights column'. Moreover, if there was a partition in 1980, separate cultivation would have been shown by each of the four. The Appellate Court also considered the submission that the partition was not reflected in the revenue record because the lands were mortgaged. The Court has found that the extracts at Exhs.29 and 30 did not show any charge of the Bank on the lands. The partition was not reflected in the revenue record even after the mortgage was redeemed. There is admittedly no documentary evidence reflecting the partition of the ancestral lands. That the lands are ancestral in nature cannot be disputed because even according to the Appellants there was a partition albeit in May 1980. The suit clearly postulates that the lands were ancestral in nature. On behalf of the Appellants, however, it has been urged that the Appellate Court has not considered the evidence of Narayan Damu Pawar, P.W. 2 who deposed that he was present when the alleged partition took place on 1st May 1980. However, a close perusal of the evidence of the witness would reveal that he was

unaware of the material aspects of the alleged partition as well as the surrounding circumstances.

In these circumstances, the evidence of P.W. 2 did not make any material difference. The finding was that the lands were ancestral in nature, in which the Plaintiffs and the Defendants each had share. The Second Appeal, therefore, does not raise any substantial question of law. It is however, clarified that all the parties would be liable pro rata to pay their share of the Court fee payable in accordance with law before the decree is drawn. The appeal is dismissed.

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